Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
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No. 85-742

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1985

JEPPESEN & COMPANY,
Petitioner,

VS.

BARBARA A. BROCKLESBY, et al.,
and the UNITED STATES OF AMERICA,
Respondents.

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Appendix C

United States District Court
Northern District of California

No. C-74-1874-SC

Barbara A. Brocklesby,
Plaintiff,

vs.

Jeppesen & Company, et al.,
Defendants.

No. C-74-1875-SC

Nancy Evans, Kathryn Evans, and Frank Evans,
Plaintiffs,

vs.

Jeppesen & Company, et al.,
Defendants.

No. C-74-1913-SC

Norma Lee Mobley Chapman,
Special Administratrix of the
Estate of Scott Chapman, Deceased,
Plaintiff,

vs.

Jeppesen & Company, et al.,
Defendants.

Fireman's Fund Insurance Companies
Lien Claimant.

C-2

No. C-75-0389-SC

Nancy Evans, Kathryn Evans,
and Frank Evans,
Plaintiffs,

vs.

United States of America,
Defendant.

No. C-75-1069-SC

Norma Lee Mobley Chapman,
Special Administratrix of the
Estate of Scott Chapman, Deceased,
Plaintiff,

vs.

United States of America,
Defendant.

No. C-75-1937-SC

Barbara A. Brocklesby,
Plaintiff,

vs.

United States of America,
Defendant.

No. C-76-0161-SC

World Airways, Inc.,
Plaintiff,

vs.

United States of America,
Defendant.

JUDGMENT

[Filed July 25, 1983]

In accordance with the verdicts of the jury rendered herein in favor of plaintiffs and against Jeppesen & Company and in accordance with the order of this court awarding prejudgment interest, it is hereby ordered, adjudged, and decreed that:

(1) Plaintiff World Airways recover of the defendant Jeppesen & Company the sum of $9,300,000.00 together with prejudgment interest thereon from May 8, 1974 to date;

(2) Plaintiff Barbara Brocklesby recover of the defendant Jeppesen & Company the sum of $575,000.00;

(3) Plaintiff Norma Lee Mobley Chapman recover of the defendant Jeppesen & Company the sum of $750,000.00;

(4) Plaintiff Nancy Evans recover of the defendant Jeppesen & Company the sum of $980,000.00;

(5) Plaintiff Frank Evans recover of the defendant Jeppesen & Company the sum of $25,000.00;

(6) All plaintiffs recover of defendant Jeppesen & Company their costs of suit;

(7) Postjudgment interest accrue on each of the above items until paid.

Dated: July 25, 1983.

/s/ SAMUEL CONTI
United States District Judge

Appendix D

United States District Court
Northern District of California

No. C-74-1874-SC

Barbara A. Brocklesby,
Plaintiff,

vs.

Jeppesen & Company, et al.,
Defendants.

No. C-74-1875-SC

Nancy Evans, Kathryn Evans, and Frank Evans,
Plaintiffs,

vs.

Jeppesen & Company, et al.,
Defendants.

No. C-74-1913-SC

Norma Lee Mobley Chapman,
Special Administratrix of the
Estate of Scott Chapman, Deceased,
Plaintiff,

vs.

Jeppesen & Company, et al.,
Defendants.

Fireman's Fund Insurance Companies
Lien Claimant.

D-2

No. C-75-0389-SC

Nancy Evans, Kathryn Evans,
and Frank Evans,
Plaintiffs,

vs.

United States of America,
Defendant.

No. C-75-1069-SC

Norma Lee Mobley Chapman,
Special Administratrix of the
Estate of Scott Chapman, Deceased,
Plaintiff,

vs.

United States of America,
Defendant.

No. C-75-1937-SC

Barbara A. Brocklesby,
Plaintiff,

vs.

United States of America,
Defendant.

No. C-76-0161-SC

World Airways, Inc.,
Plaintiff,

vs.

United States of America,
Defendant.

AMENDED JUDGMENT

[Filed Aug. 12, 1983]

In accordance with the verdicts of the jury rendered herein in favor of plaintiffs and against Jeppesen & Company and in accordance with the July 25, 1983 order of this court awarding prejudgment interest and the August 11, 1983 order of this court disposing of all parties post-trial motions, it is hereby ordered, adjudged, and decreed that:

(1) Plaintiff World Airways recover of the defendant Jeppesen & Company the sum of $5,811,250.00 together with prejudgment interest on $9,300,000.00 from May 8, 1974 to July 25, 1983 in the amount of $6,155,580.81;

(2) Plaintiff Barbara Brocklesby recover of the defendant Jeppesen & Company the sum of $201,250.00;

(3) Plaintiff Norma Lee Mobley Chapman recover of the defendant Jeppesen & Company the sum of $262,500.00;

(4) Plaintiff Nancy Evans recover of the defendant Jeppesen & Company the sum of $330,000.00;

(5) Plaintiff Frank Evans recover of the defendant Jeppesen & Company the sum of $25,000.00;

(6) All plaintiffs recover of defendant Jeppesen & Company their costs of suit;

(7) Postjudgment interest accrue as of July 26, 1983 on each of the above items until paid.

Dated: August 11, 1983.

/s/ SAMUEL CONTI
United States District Judge

Appendix E

United States District Court
Northern District of California

No. C-74-1874-SC

Barbara A. Brocklesby,
Plaintiff,

vs.

Jeppesen & Company, et al.,
Defendants.

No. C-74-1875-SC

Nancy Evans, Kathryn Evans, and Frank Evans,
Plaintiffs,

vs.

Jeppesen & Company, et al.,
Defendants.

No. C-74-1913-SC

Norma Lee Mobley Chapman,
Special Administratrix of the
Estate of Scott Chapman, Deceased,
Plaintiff,

vs.

Jeppesen & Company, et al.,
Defendants.

Fireman's Fund Insurance Companies
Lien Claimant.

No. C-75-0389-SC

Nancy Evans, Kathryn Evans,
and Frank Evans,
Plaintiffs,

vs.

United States of America,
Defendant.

No. C-75-1069-SC

Norma Lee Mobley Chapman,
Special Administratrix of the
Estate of Scott Chapman, Deceased,
Plaintiff,

vs.

United States of America,
Defendant.

No. C-75-1937-SC

Barbara A. Brocklesby,
Plaintiff,

vs.

United States of America,
Defendant.

No. C-76-0161-SC

World Airways, Inc.,
Plaintiff,

vs.

United States of America,
Defendant.

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ORDER RE POST-TRIAL MOTIONS

[Filed Aug. 11, 1983]

These consolidated actions all arise out of the crash of a World Airways DC-8 cargo aircraft during an instrument approach to Cold Bay, Alaska, on September 8, 1973. Plaintiffs are World Airways and the heirs of three individuals who died in the crash. Defendants are the United States government and Jeppesen & Company, the publisher of the instrument approach chart being used by the World Airways crew at the time of the crash. Plaintiffs' claims against Jeppesen were tried before a jury and a verdict for plaintiffs rendered therein on June 27, 1983. On July 14, 1983 plaintiffs settled their claims against the government. In accordance with the verdict of the jury and the July 25, 1983 order of this court awarding plaintiff World Airways prejudgment interest, judgment was entered in favor of plaintiffs and against Jeppesen on July 26, 1983. Several post-trial motions are now before the court. The motions will be disposed of as set forth below.

Jeppesen's motion to amend judgment

By this motion, Jeppesen seeks to have the judgment against it reduced to reflect the amounts that plaintiffs have received in settlement of their claims against the government. The settlement, which is for a total of $5,000,000, allocates $3,488,750 to World Airways, $650,000 to Nancy Evans, $487,500 to Lee Chapman, and $373,750 to Barbara Brocklesby. Plaintiffs concede that under section 877(a) of the California Code of Civil Procedure, Jeppesen is entitled to a judgment credit in the above amounts.

Jeppesen also argues, however, that this credit should be deducted prior to rather than after the computation of prejudgment interest on World Airways' award. The court disagrees. The purpose of prejudgment interest is to ensure that a damaged party is fully compensated for his loss. *In re Pago Pago Aircrash of January 30, 1974,* 525 F. Supp. 1007, 1013-15 (C.D. Cal. 1981). The purpose of section 877(a) is to prevent a double recovery for the same loss. *Vessey v. United States,* 626 F.2d 627, 633 (9th

Cir. 1980). These purposes are complementary, not contradictory. Thus section 877(a) was not intended to prevent a damaged party from fully recovering for his loss once, nor was it intended to limit the extent of a party's otherwise compensable injury. Cal. Code Civ. P. § 375(g). Therefore, because World Airways did not receive any settlement funds prior to the entry of the judgment against Jeppesen, its compensable injury properly includes the loss of prejudgment interest on the full amount of the jury verdict in its favor.

The cases relied on by Jeppesen are not to the contrary. In *Coleman Engineering Co. v. North American Aviation, Inc.*, 65 Cal.2d 396 (1966), the plaintiff was a general contractor whose original claim for damages included claims that had been asserted against it by non-party subcontractors. When plaintiff settled some of these claims for less than the amounts originally demanded, the amount of the actual injury it suffered was correspondingly reduced. Because these settlements had reduced the plaintiff's injury, prejudgment interest on this reduced amount was sufficient to fully compensate plaintiff for its loss. *Id.* at 409. Similarly, in *Leaf v. Phil Rauch, Inc.*, 47 Cal.App.3d 371 (1975), plaintiff's claim for damages was reduced by defendant's setoff prior to computation of prejudgment interest because the setoff reduced to [sic] amount of plaintiff's actual injury. *Id.* at 376. Thus neither case is applicable to the circumstances currently before the court. Jeppesen will therefore be given a credit on the judgment against it, but this credit will be deducted after the computation of prejudgment interest on World's award.

World Airways' motion to amend judgment

By this motion, World Airways asks the court to compute the exact amount of prejudgment interest that accumulated during the period of May 8, 1974 to July 25, 1983, which is the period for which the court has already awarded prejudgment interest. Using the formula set forth in *In re Pago Pago Aircrash of January 30, 1974*, 525 F. Supp. 1007, 1021 (C.D. Cal. 1981), the court has computed prejudgment interest and finds it to be $6,155,580.81. The judgment will be amended accordingly.

Jeppesen's motion to enforce written settlement agreement and for judgment of indemnity

By this motion, Jeppesen seeks entry of a judgment of indemnity in its favor and against the government. The motion is based upon a written indemnity agreement which was entered into by Jeppesen and the government shortly before trial of this matter began. The agreement provides that the government will indemnify Jeppesen to the extent that Jeppesen is found liable on any theory for publishing an instrument approach procedure that was defectively designed by the government. The agreement further provides that special interrogatories will be submitted to the jury in order to determine the extent of the government's liability under the agreement or, in lieu of special interrogatories, that the matter could be submitted to the trial judge.

Although these actions had been pending for 8 to 9 years, the existence of the indemnity agreement became known to the court only on the eve of trial. Jeppesen had never filed a cross-claim for indemnity. Thus neither the agreement nor the proposed special interrogatories ever became a part of this action. The court felt that it would be unfair to the plaintiffs to present an entirely new matter to the jury in the form of special interrogatories when this matter was not within the claims or purview of the plaintiffs' case. Moreover, the court felt that both the special interrogatories and the portion of the agreement on which they were based was framed in language that would be confusing to the jury and likely to affect their understanding of the plaintiffs' case. In sum, instead of filing a cross-claim or separate action for indemnity against the government, Jeppesen proceeded on its own, outside the rules of pleading, and without the court's prior knowledge or consent agreed that either the court or jury would decide certain questions not otherwise a part of this action. Thus the court refused to allow Jeppesen to submit the proposed special interrogatories to the jury, and declined to allocate fault between Jeppesen and government itself. In its motion, Jeppesen seeks not only reconsideration of the court's prior refusal to decide what portion of the judgment against Jeppesen should be paid by the government under the indemnity agreement, but also entry of a

final judgment of indemnity in its favor in accordance with whatever allocation of damages the court finds proper.

Initially, the court finds that the judgment Jeppesen seeks is not within the court's power to enter. Entry of judgment would require a full adjudication of the enforceability of the indemnity agreement, and its enforceability is at least open to question. For example, under section 877(b) of the California Code of Civil Procedure, a good faith settlement is a defense to a claim for indemnity by a non-settling joint tortfeasor. *American Motorcycle Association v. Superior Court,* 20 Cal.3d 578, 604 (1978). Whether the settlement between plaintiffs and the government is in good faith and whether the government intended to waive a section 877(b) defense in signing the indemnity agreement are thus issues that must be decided prior to entry of any judgment in Jeppesen's favor. But like the issue of the proper allocation of fault between Jeppesen and the government, these issues are not properly before the court. No complaint presenting these issues has been filed, no answer given, no discovery conducted and no evidence taken. These procedures are necessary prerequisites under the Federal Rules of Civil Procedure to the entry of the judgment Jeppesen seeks.

The only precedent for entry of judgment in circumstances similar to those presented on this motion is *Gregory v. Hamilton,* 77 Cal.App.3d 213 (1978). In that case, the California Court of Appeal held that under the California Rules of Civil Procedure, a judgment could be entered upon a motion to enforce a settlement agreement when the settlement resolved a claim that had been actually filed in the action and which was in fact the entire subject matter of the lawsuit. *Id.* at 218-21. Jeppesen, however, has not filed any claim for indemnity against the government in this court or in any other. Thus even assuming that a similar procedure for enforcing settlements was available under the Federal Rules of Civil Procedure, the circumstances of this case would render it inapplicable.

Finally, the court will also deny Jeppesen's request for reconsideration of the court's refusal to make the factual finding contemplated by the indemnity agreement allocating fault between Jeppesen and the government. In addition to those reasons

stated by the court in its original decision not to become a participant in this as yet not judicially cognizable dispute, the government has now relied on the court's original decision by entering into a settlement with plaintiffs. Thus reconsideration of the court's original decision would be especially inappropriate. Jeppesen's motion to enforce the indemnity agreement and for entry of a judgment of indemnity will therefore be denied in its entirety.

Jeppesen's motion for a new trial

Having carefully reviewed Jeppesen's motion for a new trial, the court finds the arguments made therein to be without merit. Accordingly, the motion will be denied. In light of the denial of Jeppesen's motion for a new trial, Jeppesen's request for a stay pending disposition of its new trial motion is now moot.

In accordance with the foregoing, it is hereby ordered that:

(1) Judgment in this action be amended to reflect the amounts plaintiffs have received in settlement of their claims against the government and to state the amount of prejudgment interest awarded to World Airways as $6,155,580.81;

(2) Jeppesen's motion to enforce written settlement agreement and for judgment of indemnity be denied;

(3) Jeppesen's motion for a new trial be denied; [sic]

Dated: August 11, 1983.

/s/ SAMUEL CONTI
United States District Judge